

**REMARKS UNDER 37 CFR § 1.111**

**Formal Matters**

Claims 28, 30-37, and 50-54 are pending after entry of the amendments set forth herein.

Claims 28 and 53 are amended to more particularly point out and distinctly claim the invention. Support for the amendments to both claims 28 and 53 can be found within the originally filed application. The language relating to the further definition of the third nucleotide sequence can be found within previously pending now canceled claims 29 and 38. Further support for this language can be found within the specification such as in paragraph [0080] bridging pages 20 and 21. Support for the further definition of the promoter is found in the specification such as on page 16 in paragraph [0072]. No new matter has been added.

Claims 29, 38 and 49 have been canceled.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

**Judicially Created Obviousness-Type Double Patenting Rejection**

Applicants do not acquiesce to the rejection of the claims over claims of U.S. Patent 6,372,956. However, applicants wish to expedite prosecution of the application. Accordingly, applicants have attached a Terminal Disclaimer rendering the rejection moot.

**35 U.S.C. §112, first paragraph Rejection**

The previously pending claims were rejected under 35 U.S.C. §112, first paragraph. The rejection is traversed as applied and as it might be applied to the presently pending claims.

In support of the rejection a large portion of the arguments were directed to arguing that the claims did not support an invention beyond where the third sequence encoded a subunit of human elongated factor P-TEFb comprising cyclin T. Without acquiescing to the rejection, applicants have amended both of the independent claims to indicate that the third sequence encodes a subunit of human elongation factor P-TEFb comprising cyclin T. Accordingly, these arguments are believed to have been rendered moot.

Another section of the rejection in support of the §112 rejection argued that the claims did not support a rejection wherein the promoter was a non-T cell specific promoter. Without acquiescing to the rejection applicants have amended both independent claims 28 and 53 to indicate that the promoter is a lymphocyte promoter thereby overcoming the rejection.

The remainder of the rejection appears to refer generally to the unpredictability with respect to the production of transgenic animals. However, the rejection also appears to recognize that transgenic animals may be produced and that provided certain specificity is provided with respect to the transgenes being included there is an acceptable degree of predictability that is now believed to have been met.

In view of such reconsideration and withdrawal of the 35 U.S.C. §112 rejections is respectfully requested.

### Conclusion

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number GLAD-001CON.

Respectfully submitted,  
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Date: 5/May/04

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